

Exhibit 2



ENVIRONMENTAL HEALTH SECTION
Gold Seal Center, 918 E. Divide Ave.
Bismarck, ND 58501-1947
701.328.5200 (fax)
www.ndhealth.gov



April 11, 2013

Mr. Donn Steffen
Environmental Manager
Coyote Creek Mining Company, LLC
2000 Schafer Street, Ste D
Bismarck, ND 58501-1204

Dear Mr. Steffen:

The Department has reviewed your letter dated February 13, 2013 requesting a stationary source determination regarding the proposed Coyote Creek Mine (CCM) and the existing Coyote Station. Based upon our review of the information submitted (see enclosed memorandum), the Department has determined that emissions from the CCM and the Coyote Station need not be aggregated when determining the applicability of the PSD, Section 112 air toxics and Title V operating permit programs. The facilities are to be considered separate "sources" for purposes of determining whether the facilities are subject to the requirements of the above programs.

If you should have any questions, please contact Craig Thorstenson of my staff at (701)328-5188.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry L. O'Clair, P.E."

Terry L. O'Clair, P.E.
Director
Division of Air Quality

TLO/CDT:saj
Enc:

Environmental Health
Section Chief's Office
701.328.5160

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Air Quality
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Division of
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Division of
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DEPARTMENT of HEALTH

ENVIRONMENTAL HEALTH SECTION
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MEMO TO : File
Coyote Creek Mining, LLC
Mercer County, North Dakota

FROM : Craig D. Thorstenson
Environmental Engineer
Division of Air Quality

RE : Stationary Source Determination

CDT
DATE : April 11, 2013

A letter dated February 13, 2013 (attached) from Coyote Creek Mining Company, LLC (CCMC) requests a stationary source determination from the Department regarding a proposed lignite mine to be known as the Coyote Creek Mine (CCM). In their letter, CCMC requests a determination as to whether emissions from the Coyote Station electric generating plant and the CCM must be aggregated when determining applicability of the Prevention of Significant Deterioration of Air Quality (PSD), 1990 Clean Air Act Amendments Section 112 air toxics and Title V (Part 70) operating permit programs. The federal PSD, Section 112 and Title V requirements are incorporated into the North Dakota Air Pollution Control Rules and the Department has primary responsibility for implementing the requirements in the state of North Dakota in areas which are not located on Indian Reservations. On Indian Reservations in North Dakota the U.S. Environmental Protection Agency (EPA) has primary responsibility for implementing the above programs.

The applicable regulations consider a stationary source, or group of sources considered together, to be a major source if the stationary source (or group of sources) is located on one or more contiguous or adjacent properties and is under "common control" of the same person (or persons under common control). In addition, under PSD and Title V, the sources must be under the same industrial grouping (SIC code) to be considered part of the same stationary source.

Contiguous or Adjacent Properties Criteria

The CCM and the Coyote Station will be located on property which is over three miles apart with the property between the two sources not controlled by either party. It is determined that the two sources are not located on contiguous or adjacent properties.

Common Control Criteria

The criteria used to determine if two sources are under "common control" are outlined in the February 13, 2013 letter from CCMC. EPA guidance regarding common control includes the following:

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- September 18, 1995 letter from EPA Region VIII to the Iowa Department of Natural Resources (available at: <http://www.epa.gov/region07/air/title5/t5memos/control.pdf>).
- October 1, 1999 letter from EPA Region VIII to the Colorado Department of Public Health (available at: <http://www.epa.gov/region7/air/nsr/nstrmemos/frontran.pdf>).

Common control can be established through ownership; in this case, there is no common ownership. Common control can also be established if one entity has decision-making authority over the other (through contractual agreement, etc.); in this case, neither entity has decision-making authority over the other. Operational decisions at CCM and the Coyote Station will be made separately.

EPA has not defined "control"; however, EPA guidance references the Securities and Exchange Commission (SEC) definition of "control". The SEC definition of "control" is as follows:

Control means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person (or organization or association) whether through the ownership of voting shares, contract, or otherwise.

Neither entity (CCMC or the owners of the Coyote Station) is able to direct the management and policies of the other; therefore, the SEC definition of control is not met.

In addition to the above, common control can be established if there is a support or dependency relationship between the two entities such that one facility cannot continue to operate if the other shuts down. EPA guidance also references a "but for" test (i.e., one would not exist "but for" the other) which can be considered when determining if two entities are under common control. When determining the extent of the support or dependency relationship, the following were considered:

- The Coyote Station is not dependent on the CCM as the Coyote Station has operated since 1981 without the CCM.
- CCMC will likely enter into a long-term contract to supply coal from the CCM to the Coyote Station; however, CCMC is free to sell coal to third parties.
- The Dakota Westmoreland Beulah Mine currently supplies coal to the Coyote Station and it appears that the Beulah Mine will stay open even if the agreement to supply coal to the Coyote Station is not renewed.
- The CCM does not produce a specific product that can only be utilized at the Coyote Station. Demand for coal (and not the CCM relationship with the Coyote Station) is expected to be a major factor in the viability of the CCM if the Coyote Station shuts down.

Based upon the above, there is a reasonable possibility that each facility could continue to operate if the other facility were to shut down. Therefore, a support or dependency relationship does not appear to exist to such an extent that the two facilities should be considered to be under common control.

Based upon the above, the CCM and the Coyote Station do not appear to be under common control.

SIC Code Criteria

CCM is a coal mine in SIC major group 12, while Coyote Station is under SIC major group 49. However, an August 2, 1996 EPA memorandum (available at: <http://www.epa.gov/ttn/caaa/t5/memoranda/dodguid.pdf>) has established that "support" activities must be aggregated with the associated "primary" activity regardless of dissimilar SIC codes. The August 2, 1996 memorandum discusses a "50 percent support test" to be used as a presumptive test to determine whether one facility supports the other. Although this document is intended for determinations at military facilities, the language relating to support facilities can be applied to non-military facilities.

The above-referenced August 2, 1996 memorandum states that "a support facility usually would be aggregated with the primary activity to which it contributes 50 percent or more of its output". The document adds a footnote stating, "However, while the 50 percent support test is the presumptive test for these programs, it may not be the most appropriate test in certain situations. Support facility relationships should always be established in light of the particular circumstances of the sources being evaluated".

If greater than 50 percent of the coal mined at CCM will be supplied to the Coyote Station, then CCM may be presumed to be a support facility for the Coyote Station and the facilities would be considered classified under the same SIC code for purposes of the PSD and Title V rules. It should be noted that the Coyote Station has been in operation for many years without the CCM; however, it is unknown what percentage of the coal mined at CCM will be supplied to the Coyote Station.

Given the uncertainties regarding the amount of coal to ultimately be supplied from CCM to the Coyote Station, the Department is unable to determine at this time if the two sources should be considered to be under the same SIC code.

Conclusion

Two sources must satisfy the first two above-referenced criteria (be on contiguous or adjacent property and be under common control) to be considered the same stationary source under the Section 112 air toxics program. In addition to the first two criteria, two sources must satisfy the third criteria (belong to the same SIC code or have a support facility relationship) to be considered the same stationary source under PSD and Title V programs.

The Coyote Creek Mine and the Coyote Station do not appear to be under common control and it is unclear if the two sources should be considered under the same SIC code. However, the two sources are not located on contiguous or adjacent properties. Since the two sources are not located on contiguous or adjacent properties, the sources are considered separate sources for purposes of determining whether the sources are subject to the requirements of the above programs.

CDT:saj
Attach: